

**BAKER DONELSON**  
BEARMAN, CALDWELL & BERKOWITZ, PCBAKER DONELSON CENTER,  
SUITE 800  
211 COMMERCE STREET  
NASHVILLE, TENNESSEE 37201MAILING ADDRESS:  
P.O. BOX 190613  
NASHVILLE, TENNESSEE 37219PHONE: 615.726.5600  
FAX: 615.726.0464

www.bakerdonelson.com

BEN H. BODZY  
Direct Dial: 615.726.5640  
Direct Fax: 615.744.5640  
E-Mail Address: bbodzy@bakerdonelson.com

June 1, 2016

Mark J. Langer, Clerk of Court  
U.S. Court of Appeals, D.C. Circuit  
E. Barrett Pettyman U.S. Courthouse  
333 Constitution Avenue, N.W.  
Washington, D.C. 20001**BY ELECTRONIC FILING**Re: Ozburn-Hessey Logistics, LLC v. National Labor Relations Board  
Case Nos. 14-1253, 14-1289, 15-1184, 15-1242

Dear Mr. Langer:

Pursuant to Fed. R. App. P. 28(j), I am writing to bring supplemental authority to the Court's attention in the above-referenced cases ("OHL Appeals"). This Court's recent decision in *Manorcare of Kingston PA, LLC v. NLRB*, Case No. 14-1166 (May 20, 2016) supports OHL's position because: (1) *Manorcare* overturns a union election based on threats similar to those in this case, and (2) *Manorcare* clarifies that it is the Board's burden [rather than OHL's burden] to demonstrate that its decision is consistent with prior Board precedent.

OHL raised an election objection based on Keith Hughes threat of violence to Dawn Barnhill. (Case No. 15-1184, OHL Final Opening Brief, pp. 16, 38). Ms. Barnhill was wearing a "No means no" t-shirt opposing the union. Keith Hughes told Ms. Barnhill, "I'll rip that shirt off of you." (Case No. 15-1184; J.A. 115). The Board overruled OHL's election objection on three grounds: (1) because Hughes was not a union agent; (2) because the threat was not sufficiently disseminated, and (3) because OHL mitigated the threat by disciplining Hughes. (Board D & O, p. 17). *Manorcare* directly undermines the first two rationales because it involves threats made by a union supporter, as opposed to a union agent, and it clarifies that the threat only needs to be "disseminated widely enough to have affected the outcome of the election."<sup>1</sup> *Manorcare* at p. 9. Just as the Board erred in *Manorcare*, in declining to sustain an

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<sup>1</sup> Here, the election margin is between 0 and 3 votes depending on the outcome of this appeal.

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election objection based on threats of violence by union supporters, it similarly erred in this case.  
<sup>2</sup>

*Manorcare* also clarifies that "[i]t is the Board that must demonstrate its decisions are consistent with its precedent." *Manorcare* at p. 11. OHL has argued that the Board departed from its precedent with respect to the challenges to the administrative assistants and in its failure to require similarly situated comparators. (Case No. 15-1184, OHL Final Opening Brief, pp. 23-24, 27-29). Under *Manorcare*, it is not OHL's burden to establish a departure from Board precedent, but rather it is the Board's burden to show that its decision is consistent with Board precedent.

Sincerely,

/s/ Ben Bodzy

Ben Bodzy

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<sup>2</sup> As indicated in OHL's Final Opening Brief in Case No. 15-1184 at p. 38, the Board's third rationale (that OHL mitigated the impact of the threat by disciplining Hughes for it) is impossible because Hughes' discipline was not until well *after* the election.